

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re	)	
	)	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	)	EB Docket No. 11-71
	)	File No. EB-09-01-1751
Participation in Auction No. 61 and Licensee	)	FRN: 001358779
Of Various Authorizations in the Wireless	)	
Radio Services	)	
	)	
Applicant for Modification of Various	)	App. FNs 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028,
Applicant with ENCANA OIL AND GAS	)	0004193328, 0004354053,
(USA), INC.; DUQUESNE LIGHT	)	0004309872, 0004310060,
COPANY; DCP MIDSTREAM, LP;	)	0004314903, 0004315013,
JACKSON COUNTY RURAL,	)	0004430505, 0004417199,
MEMBERSHIP ELECTRIC	)	0004419431, 0004422320,
COOPERATIVE; PUGET SOUND	)	0004422329, 0004507921,
ENERGY, INC.; INTERSTATE	)	0004153701, 0004526264,
POWER AND LIGHT COMPANY;	)	0004636537, 0004604962.
WISCONSIN POWER AND LIGHT	)	
COMPANY; DIXIE ELECTRIC	)	
MEMBERSHIP CORPORATION, INC.;	)	
ATLAS PIPELINE – MID CONTINENT,	)	
LLC; DENTON COUNTRY ELECTRIC	)	
COOPERATIVE, INC., DBA COSERV	)	
ELECTRIC; AND SOUTHERN	)	
CALIFORNIA REGIONAL RAIL	)	
AUTHORITY	)	

To: Marlene H. Dorch, Secretary  
Attention: Chief Administrative Law Judge Richard L. Sippel

Further Notice of Appearance with Reasons

I, Warren Havens (“Havens”) submit this as instructed by Judge Sippel, with objections already noted in Havens previous filings on the matters of this filing, including the Appeal he filed on May 21, 2013 to the Commission. Herein, “MCLM” means the same as “Maritime.”

The Judge’s last instructions on the matter of Havens’ pro se participation is in FCC13M-11, at p. 4:

Havens shall personally file a Notice of Appearance representing that he chooses to participate in this proceeding pro se. He shall include in the Notice his reasons for proceeding pro se. [11](#)

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[11](#). Order, FCC 13M-8 at 2....

FCC 13M-8 at page 2 instructs:

- Mr. Havens shall immediately retain legal representation for the SkyTel entities, as he is not authorized to represent those companies. [5](#) If Mr. Havens fails or refuses to obtain qualified counsel for the SkyTel entities, those entities will not be allowed to participate in this proceeding any further, until such time that they do obtain counsel. [6](#) Any future motion in which Mr. Havens attempts to represent the SkyTel entities will be struck with respect to arguments made on their behalf.
- Havens shall personally file a Notice of Appearance representing that he chooses to participate in this proceeding *pro se*. [7](#) He shall include in the Notice his reasons for proceeding *pro se*. [8](#)

Mr. Havens will not be permitted to participate in this proceeding until he completes these steps. His participation will be governed by the framework set out in *Order*, FCC 12M-52. [9](#) It is also noted that, in... [end of page 2]

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[5.](#) *Order* FCC 12M-16 at 3-5 (March 9,2012).

[6.](#) *See id.* at 5.

[7.](#) *See Order*, FCC 12M-52 at 4.

[8.](#) Mr. Havens shall provide the facts that are specific to his situation that have led him to proceed *pro se*. He is not asked to include legal arguments that he hopes will justify his *pro se* participation. Any such arguments he includes will not be evaluated.

[9.](#) *Id.* The framework for Mr. Havens' *pro se* participation is predicated on his working with counsel for SkyTel so that confusion over bifurcated representation and duplicative pleadings may be avoided. If Mr. Havens files an appearance to participate *pro se* but refuses to acquire representation for the SkyTel entities, Mr. Havens' Notice of Appearance may face opposition by other parties in this proceeding. Should any such motions be filed, they must contain legal arguments that are firmly grounded in the Commission's rules as well as relevant facts.

Subject to the objections noted above, Havens submits as instructed the following

“reasons” – “facts.... Not legal arguments....”<sup>1</sup>

1. I have already filed a notice of appearance. Rule §1.221 provides (emphasis added):

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<sup>1</sup> It is not clear what “reasons “facts but “not legal arguments” means. A reason is more than a fact and can be an argument.

(d) The Commission will on its own motion name as parties to the hearing any person found to be a party in interest.

(e) In order to avail himself of the opportunity to be heard, any person named as a party pursuant to paragraph (d) of this section shall, within 20 days of the mailing of the notice of his designation as a party, file with the Commission, in person or by attorney, a written appearance in triplicate, stating that he will appear at the hearing.

The Commission in the Hearing Designation Order FCC 11-64 designated me as a party as described in subsection (d) above, and I then a timely notice of appearance under section (e) above via the Nossaman law firm on May 6, 2011. That Notice, following the rule above, is a notice that a party, in this case myself, will appear, not that an attorney will appear. This rule does not require that, once I have filed a timely and proper notice of appearance, as I did, that I must use the attorney who filed the notice to represent me in the hearing, or that if I do commence to use that or another attorney as representative, but discontinue the representation of the attorney (or several in succession), that I will have to appear again as a “party in interest” by filing another notice “in person or by attorney.”

Thus, the first reason fact I submit as to why I am filing this notice of appearance, is that the Judge instructed it, but I do not believe the rule requires it.

I repeat the relevant language in my above noted original notice of appearance as follows:

Warren C. Havens ... pursuant to 47 C.F.R. §1.221 and in accordance with ... FCC 11-64...and... FCC 11M-11...hereby file this Notice of Appearance stating [his]... intention to ... appear on the date to be fixed for the show cause hearing in this matter and to participate and present evidence therein....

2. The second reason fact is that I desire to be in the Hearing to protect my lawful FCC-license based interests, and also to support the “SkyTel” entities: certain LLCs and the Skybridge Spectrum Foundation.<sup>2</sup> I contribute to these entities each year, various personal time

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<sup>2</sup> As I have often described to the Judge, I am not the sole owner of these LLCs (but for V2G LLC) and have no ownership at all in the Foundation (which has no owners, and cannot under applicable law). Each entity has its own assets (including FCC licenses), ownership structure,

and resources, on formal (for defined legal interests) and informal basis (but to aid these entities) as well as on a charitable basis (all of the time and resources I contribute the Foundation are without any economic consideration in return, but support the public-interest goals of the Foundation, to promote wireless in support of federal agencies' stated goals of "smart transportation," "smart grid" (energy systems), and environmental monitoring and protection). These lawful interests are in part further described in the following item 3.

3. The Commission made Havens, as an individual, a party in the HDO, FCC 11-64. That was for reasons clear in the HDO: the "petitioners" that are described therein as the seminal cause of the HDO, and this Hearing under 11-71, included Havens as an individual (along with SkyTel entities), including since Havens had and showed interest and Article III standing to petition against the MCLM Long Form in Auction 61, and the assignments from Mobex to MCLM of site-based licenses. Havens had standing including since he had pending on administrative appeal AMTS site-based license applications that competed with Mobex site-based licenses (assigned to MCLM) and these Havens applications were subject to mutually exclusive applications of Mobex, and petitions by Mobex challenging said Havens applications (which were assigned to MCLM also, and then carried on by MCLM). He also had standing since he held other, non-AMTS licenses in the same areas as MCLM held licenses, and was in active competition with MCLM in the relevant markets.

Issue (g) in this Hearing is simply described in the HDO but it is based upon the above-

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corporate and tax ID, history, etc. But I am not, and these entities are not, subject to government demands to prove up these differences that are secured under proper corporate filings in the relevant States of domicile and tax filings, etc. (unless the demand is for good cause shown, by an agency with jurisdiction, not present in this Hearing). Each of these entities has, in fact, provided to the FCC their ownership structure and other information required, and has separate FRNs, licenses, etc. The FCC has reviewed and accepted these. A federal agency does not have jurisdiction to challenge corporate actions and structure, per se, that is subject of State law, and should not intrude on those matters, and such intrusion may be a tort actionable under the Federal Tort Claims Act.

noted Petitioners Petitions referenced in the HDO which include Havens. Havens challenged Mobex, and vice versa, before MCLM began and before any SkyTel entity was formed, and as noted above, these continued into the MCLM and SkyTel-entities period, through the HDO, and continues to this day.

If the Judge or the EB or any party to this Hearing wants to be informed as to issue (g), they should review the history and read the Petitioners Petitions on the issue (g) matters that was the cause of inclusion of issue (g) in the hearing. For that, Havens participation is important in this Hearing.

4. Havens is among the defined “SkyTel” parties subject to legal obligations to satisfy the Enforcement Bureau (EB) document demand to said parties, which is on an ongoing basis. Havens has, in fact, provided to the EB documents on said ongoing basis, the last time of which is shown in Exhibit 30 to the Havens filing of May 22, 2013 in this Hearing, an Opposition to the Maritime Motion for Summary Decision. I seek to continue in this Hearing to complete this discovery task. I am obtaining additional documents relevant to issue (g) and the other issues in this Hearing (which are in limbo at this time, but not decided): these are being obtained by various investigation processes, including in court actions.

This EB demand is in part related to an Order and instructions of the Judge to Havens (which he took to mean all of the SkyTel parties including Havens) to complete the securing, copying, and delivering of approximately 220,000 pages of MCLM records as to its site-based licenses. Havens offered to do this at no cost to the government, which the Judge noted to the EB was a benefit it should accept. This was pursued by Havens and the SkyTel legal entities at a cost exceeding \$100,000, not fully counting some expenses (salaries of staff time, etc.<sup>3</sup>

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<sup>3</sup> As to these records, here are further details: Securing them was achieved by the means Havens described to the Judge, involving a court protective order. Havens described to the Judge and the EB directly, and to the EB via his legal counsel in one of the court cases, the

5. As partly indicated above, Havens knows far more about the facts, and probably more about the specific AMTS law (and some other law) involved in issue (g) and the other issues in this hearing, than any attorney at law in our outside of DC, or in the FCC. He has managed FCC licensees which for over a decade hold the most quantity of AMTS spectrum (in “MHz-Pop” or MHz- Square Mile” basis, at least not counting site-based co-channel stations that, under the facts and law, are subject to “automatic termination”). He has negotiated and closed all AMTS license transactions that were commenced and presented to the FCC, and presented scores of papers on technical and legal issues involving AMTS privately and publicly, as reflected in FCC records of his, and SkyTel entities’, FCC licenses. He has also managed, for decades, more litigation than most litigation counsel at law firms including in in US courts up to the Supreme Court.

I disagree with the Judge that this is a “complex” case. The complication is why the

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following: (1) Havens found the records at a storage facility, after by sworn statement to the FCC by Maritime that falsely asserted the records were destroyed, under Maritime-Mobex control. (2) Maritime rejected any claim of possession or ownership of these records and alleged it was not “privy” to what was in the records. (3) Havens obtained via a court order to preserve evidence, and covert the records to PDF format by a bonded copier, and this was completed and the electronic records provided under protective orders to the courts in the Maritime bankruptcy case (in MS) and antitrust case (in NJ). (4) Maritime then asserted that these records (that it alleged it never possessed or wanted, and thought were destroyed, and was not privy to as to the contents) were nevertheless “confidential” to Maritime. (5) *Havens submitted suggestions, multiple times, to the EB and the Judge to use their authority, including subpoena power, to obtain these records for purposes of this Hearing, since they are records of the site-based licenses, approximately 100 boxes.* The EB and Judge took no such action. (6) Mobex and Maritime removed some of these stored boxes and allege they do not know what happened to them. (7) David Predmore, former General Counsel and CEO of Mobex (and the “last man standing”) testified (with supporting documents) in the MCLM antitrust case recently that Maritime in fact obtained the Mobex records on the site based stations and held “hundreds” of boxes of Mobex records, after the Maritime acquisition of Mobex (or its assets) at the Maritime offices. (8) *But, to date, Maritime will not produce these records in the antitrust action, or in this FCC Hearing.* (9) Based upon, in large part, the Predmore deposition and documents produced, the story Maritime told the FCC under oath (to the WB, and in this Hearing) and in the antitrust case before a USDC judge, was repetitively false and appears to be fraud, and it was wholly unbelievable in the first place. (10) See also Havens Opposition to the Maritime Motion for Summary Decision, filed May 22, 2013 and its Exhibit 30. *I seek to participate in the Hearing to introduce and explain this evidence, and other evidence I already provided, and additional evidence I am obtaining.*

FCC, after decades, does not want to look at the simple facts or apply the simple law in the “public interest, convenience, and necessity.” I want to continue in this case to pursue that public interest. If the Judge wants further details, I will provide them.

6. Havens presents facts and law in proper manner in FCC proceedings including in this Hearing.<sup>4</sup> He has not been found to act to the contrary in this Hearing.

7. An individual has a right to self representation under the Constitution and that extends to federal agency proceedings, and involves actions to protect private interests, as in this case. I have asserted this to the Judge. I am not willing to give up on this either on economic grounds, or on the public-interest principal involved. I will take the matter to a Circuit Court after first exhausting administrative remedies.<sup>5</sup>

8. The Judge inaccurately accused and improperly stigmatized me in various orders. I seek to participate in the hearing to mitigate this.

As noted above, I have submitted an Appeal to the Commission as to the effective removal of myself from pro se participation. However, while not giving up on or waiving any aspect of the Appeal, I also seek to mitigate damages to myself, to my support of the SkyTel entities noted above, and to the public interest that I believe will benefit from participation in the

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<sup>4</sup> The “Havens sanction” orders of the Commission were revised down to only requiring Havens to state in the subject proceeding, that any future pleading was not frivolous, but that is not sanction (unless the other meaning of the word is applied). See: <http://www.scribd.com/doc/139531421/FCC-Sanctions-Order-Re-Warren-Havens-FCC-backtracks-and-concedes-only-had-a-rule-that-by-implication-justified-its-action-which-is-no-rule-at-a>.

<sup>5</sup> I also assert that “Bivens Action” viability still exists as a basis for claims in US District Courts when a government employee in exercise of its official duties violates protected rights under the Constitution. See e.g., *Writers Guild v. FCC*, 423 F. Supp. 1064. I have explained this in pleadings before the FCC in the history of the MCLM matters now in this Hearing. As applied to the FCC, the Ninth Circuit instructed (in an appeal of the case just cited) that Bivens claims are not ripe until the complainant has reasonably exhausted administrative remedies.

Hearing, if the Judge permits me to participate pro se in this Hearing including while the Appeal is pending. I thus have submitted this filing.

Respectfully submitted,

/s/

Warren Havens, an individual party

Warren Havens<sup>[\*]</sup>  
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Dated: May 23, 2013

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[\*] A copy should also be provided to Jimmy Stobaugh of any email to Havens on matters of this filing, including Havens participation in this Hearing. [jstobaugh@telesaurus.com](mailto:jstobaugh@telesaurus.com)

### Declaration

I declare under penalty of perjury that the factual assertions in the preceding “Further Notice...” are true and correct.

/s/

Warren Havens

## CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 23, 2013, I caused a true copy of the foregoing “Further Notice...” filing in FCC docket 11-71 to be served by USPS first class mail (with courtesy email copies, using emails of record) to:

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/s/

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Warren Havens